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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,882	09/30/2003	Robert Holt	180825.00047	9227
26710 7590 10/28/2009 QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE SUITE 2040 MILWAUKEE, WI 53202-4497				
EXAMINER				
MISKA, VIT W				
ART UNIT		PAPER NUMBER		
2833				
NOTIFICATION DATE		DELIVERY MODE		
10/28/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pat-dept@quarles.com

### Office Action Summary

**Application No.**

10/674,882

**Applicant(s)**

HOLT ET AL.

**Examiner**

Vit W. Miska

**Art Unit**

2833

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 5-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-4 and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ko et al (7294379) in view of Frommer et al (5947369). The Ko et al reference, previously applied, contains Figs. 26(a)-(d) and the description thereof which appear to be absent in the Provisional Application priority document, the filing date thereof being necessary for application of the Ko et al patent as a reference. However, Provisional Application 60/362471 provides support under 35USC112, first paragraph, for the subject matter of at least Figs. 1-12 of the patented reference, as applied below.
2. With respect to claims 1-4, 8-9 and 11, the reference discloses a time indicator 100 in Figs. 1 and 7 that provides a color indicia after a predetermined period of time has passed after activation (see col. 19, line 30), comprising: a substrate 102 having an upper surface and a lower surface (top and bottom surfaces thereof) and a first portion adjacent 106 and a second portion adjacent 104 joined at a fold line 114, an adhesive

104 coating the upper surface of at least the second portion of the substrate (see col. 19, line 43) , a first reactant 106 adhered to the upper surface of the first portion of the substrate (col. 19, lines 47-49 "activator compound"); a second reactant 106 adhered to the upper surface of the second portion of the substrate (see col. 19, lines 46-47 "acid – based indicator"); whereby when the first portion is folded along the fold line so that the upper surfaces of the substrate contact each other and the first reactant and second reactant contact each other to activate the indicator and to provide the color indicia after the predetermined period of time after activation passes (col. 20, lines 40-44), wherein the first reactant is a printed indicia (col. 6, line 54) and the second reactant is the adhesive 104, wherein the substrate is transparent (col. 6, line 40), wherein the color indicia can be viewed through the lower surface of the substrate (col. 6, lines 40-41). With respect to claim 10, the second reactant is a chemical residue (activator 106 causes chemical reaction, col. 19, line 48).

3. Ko et al do not disclose "the first portion being smaller in area than the second portion" such that "a portion of the adhesive on the second portion remains exposed" when the two portions are folded. However, Frommer disclose a time indicating badge in Figs. 2-3 with first portion 54 and second portion 52 folded for activation of the timer, first portion 54 being smaller than portion 52 (Fig. 3) and adhesive 62 on substrate 52, 54 for securing the folded sections. As shown in Fig. 3, when portions 52, 54 are folded, portion 58c with adhesive 62 remains exposed for securing to the badge to an item (upon further folding of portion 58c). It would be obvious for one of ordinary skill in

the art, having both references, to make portions of substrate 102 adjacent 106 smaller than portion 102 adjacent adhesive 104 in Ko et al such that, when folded, a portion of adhesive 104 remains exposed for providing a surface for attachment to another item, as taught by Frommer et al.

### ***Response to Arguments***

4. Applicant's comments have been given careful consideration; however, the argument is premised on removal of the Ko et al patent as a reference, and the argument is therefore moot in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vit W. Miska whose telephone number is 571-272-2108. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Renee Luebke can be reached on 571-272-2009. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/s/ W. Miska/  
Primary Examiner, Art Unit 2833